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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,428	05/10/2001	George Brainard	BRA01-NP002	6772

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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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08/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/853,428	Applicant(s) BRAINARD, GEORGE	
	Examiner Roy D. Gibson	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 12, 14 and 28-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2, 12, 14, 28-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

Claims 30 and 47-56 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 29 and 31, 32, 2, 34-36 and 43-46 respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a claim 31. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Note that the limitation of claim 33 is included in the last portion of claim 31 from which claim 33 depends.

Claims 34, 40 and 50 are objected to because in line 3, light filtering components do not “emit” light but “transmit” light. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 12, 14 and 31-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Searfoss et al. (5,265,598). Searfoss et al. disclose a method of treating

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or preventing at least one light responsive disorder (SAD) in at least one mammal, said method comprising the steps of:

utilizing at least one light source, said at least one light source (16) emitting optical radiation;

causing said optical radiation to be therapeutically effective light in an effective amount, said therapeutically effective light comprising a spectral composition of at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm (blue light filter on wheel of eight narrow band pass filters each with 10-20 nm width and a "peak" in the blue range (450-510 which overlaps the claimed range of 435-488 while the blue filter transmits the therapeutically effective light in an effective amount);

exposing at least a portion of the retina of at least one eye of at least one mammal to said therapeutically effective light such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and, enabling at least the treatment or the prevention of at least one light responsive disorder in said at least one mammal (col. 1, lines 14-52, col. 5, line 61-col. 6, line 20 and lines 36-49).

Further to claim 35-38 a typical blue or any color filter is a inherently made of a transparent substrate with various coating which are selected to provide a transmission of selected wavelengths of, in this case, 10-20 nm wide and peaking in the blue. Note

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that the light filtering component would be transparent or translucent depending upon the thickness of the coating material(s). (See Sakamoto et al., patent no. 5,648,653 for details).,

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hegyi (5,235,178). Hegyi discloses a light sensor with diffuser whereby the electrical, output signal is representative of a response characteristic applied to the input light which corresponds to that of a human eye or is equivalent to a light meter system comprising a light metering device configured to match wavelength sensitivity of the human eye (col. 4, line 1-col. 5, line 20). The peak sensitivity wavelength range of 425-488 nm can be readily be obtained as required by an appropriate filter with that transmission range as is well known in the art of band pass filters.

Note also that any typical commercial light or exposure meter can be readily modified for peak sensitivity, in the wavelength range of 425-50 nm by an appropriate filter with that transmission range as is well known in the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Daffer et al. (5,645,578) disclose a light therapy device with blue lights positioned to expose the patients eyes to treat SAD; Jung et al. (6,271,913) disclose an apparatus for measuring optical characteristics of an object; and Hinoda et al. (4,547,074) disclose a color sensing device including photo sensors matched with filters to measure light in the 400-500 nm range.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/
Primary Examiner
Art Unit 3739

July 31, 2008